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John Westlake.

The Transvaal War.

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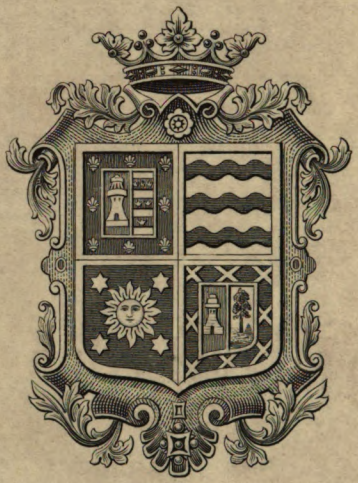

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THE TRANSVAAL WA

A LECTURE

DELIVERED IN THE

UNIVERSITY OF CAMBRIDGE

ON 9TH NOVEMBER, 1899,

BY

J. WESTLAKE, Q.C., LL.D.,

WHEWELL PROFESSOR OF INTERNATIONAL LAW IN THAT UNIVERSITY.

SECOND EDITION.

London: C. J. CLAY AND SONS,
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1899

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Having secured a good shorthand report, I have preferred to throw any further observations into the form of notes. To incorporate them with the text, and thereby turn the lecture into an essay, would have tended to make it less clear that even with their addition my scope has not been to treat the subject exhaustively, but only in a manner suitable to a lecture.

J. W.

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THE TRANSVAAL WAR.

If a Greek or Roman writer had to tell the story of a war, he usually took some opportunity at its commencement to throw the views and motives of the parties into the form of set speeches, supposed to have been delivered by their statesmen or generals. No better occasion of the kind was ever invented than that which in sober fact presented itself in the last days of May and the first days of June this year, when Sir Alfred Milner, the Queen's High Commissioner for South Africa, and Mr Kruger, the President of the South African Republic, met in conference at Bloemfontein. You know in a general way that at that time there were great complaints of grievances suffered by Uitlanders, or foreigners, in the South African Republic, of whom the larger proportion were British subjects, and that those grievances, which I shall mention more particularly later, had their foundation in the steady resolve of the Dutch government of that republic to maintain the Dutch language and the Dutch social and political system, including their methods of treating the natives. Now at the commencement of that conference Sir Alfred Milner said that he asked for the franchise, that is the power of voting for the election of the volksraad or parliament, for the Uitlanders, together with such an increase to the number of seats enjoyed by the Rand, the district where the gold mines are situated, as would give the Uitlanders a substantial representation in the volksraad.

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And he asked that distinctly not as a claim of right; he put it as a friendly suggestion, which would cut the root of the grievances complained of by giving the Uitlanders the power of looking out for themselves in the volksraad. It was a short way out of a great difficulty, that of dealing with all the particular cases of grievance in detail. Sir Alfred Milner tried to induce President Kruger to agree to his demand by pointing out to him that it would secure the independence of his country, because any motives for attack upon that independence which might exist would cease. President Kruger was equally clear in the manner in which he met that suggestion. He said that the effect would be to swamp the Dutch population. I should have said that Sir Alfred Milner put forward his suggestion not as though the numerical majority, which at present is with the Uitlanders, should immediately have a corresponding majority in the volksraad, but that they should at once have a substantial representation, and then, being able to fight their own battles, the increase of their number in the volksraad would follow in the natural course of things, just as we find in our own country the increase of representation of any class in parliament grows with the growth of its numbers and importance in the country. President Kruger went at once to the ultimate result. It was indifferent to him that the change was to be introduced gradually: he fixed and clung to the fact that it would only end, and in fact was meant to end, in the swamping of the Dutch population by Uitlanders. He said "we might just as well throw up the republic,"... it "would be worse than annexation." Independence preserved in that manner he regarded as "independence lost." He showed plainly that what he was contending for was not the mere independence of the South African Republic as a certain territory outlined by a coloured border on the map, within which no outside power was to interfere; what he valued under the name of its independence was the

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preservation of its peculiar language and social and political system. Sir Alfred Milner was firm in his demand. In answer to certain hints which had been thrown out about the possibility of compensation, he said "I cannot agree to buy with something else that just settlement which would be in your interest as well as mine." And he went on to say in words, the plainest ever used in diplomacy and plainer than are often used in diplomacy, that the failure of an agreement upon the point which he had submitted "would lead to an open breach between the two governments...There is no other way out except war." President Kruger clung to the possibility of a bargain, and the point upon which at that time it was in his mind that the bargain might turn was that of arbitration, the establishment of a system of arbitration between the Queen's government and that of his republic. But if I understand rightly the previous despatches to which he referred, he did not so much mean arbitration upon the particular differences which might from time to time arise between the two governments as arbitration on the general interpretation of their relations, by means of which he hoped to get an award which would say that his state did not exist in that condition of dependence on the United Kingdom which it was contended on the British side characterized it. That was the last point. In the position I have stated they separated, and during the months which followed until the outbreak of war the parties, although the negotiators were no longer Sir Alfred Milner and President Kruger, but Mr Chamberlain and President Kruger, never came nearer to an agreement. The negotiations dragged on, and I think I am not wrong in saying that war was declared by the South African Republic as soon as by the spring rains and the growth of grass on the veldt it became possible for them to move their forces over it[1].

[1] The quotations are from the translation of the Transvaal green book containing the full minutes of the conference, published in the *Times* of 18th July from the Johannesburg *Star* of 24th June.

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Now it is often said that this is a war between two races. I would rather say that it is a war between two ideals, of which only one is a racial ideal. On one side you have the English ideal of a fair field for every race and every language, accompanied by a humane treatment of the native races. That ideal, no doubt, makes for the English language and for English institutions. We see how under it the English language and institutions are taking possession of a large part of the world, as being those which most successfully compete in that fair field; but although that may be the result it is not the object of the English ideal, neither is it in all cases the only possible result. In proof of that one need only point to Canada, where the French language and French laws, and even, so far as is compatible with the existence of a province which forms only part of a great dominion, French institutions generally, are preserved in loyal subjection to the Queen But the other ideal, the Transvaal ideal, is racial, not only in its result if it should succeed, but in its object. It is founded, as was practically admitted at the Bloemfontein Conference, on the desire to maintain the Dutch language, the Dutch social and political system, and its mode of treatment of the natives. We must not at once condemn an ideal because it is a racial one. The larger part of the world at present is governed by racial ideals. We see how in Russia a persistent effort is made to Russify the Finns in Finland, the Poles in Poland, and all the other subjects of the Russian Empire. We see in Germany the same eager desire to exterminate by severe pressure the Polish language and the Danish language in the parts which have been annexed from the Polish and Danish kingdoms. We see how in Austria racial ideals threaten the very integrity of the country; it seems to have great difficulty in holding together. We are, then, in a minority in having an ideal which is not a racial one, and we must look at least with respect, if not with approval, upon ideals which present themselves to the

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larger part of civilized mankind. Neither, again, should we look on the Transvaal ideal with contempt on account of the mixed motives with which it may be maintained. Human motives are always mixed. Certainly as long as the great revenues derivable from the gold mines are enjoyed by a small governing class, there must be large gains to be made out of them even without imputing corruption to those men. But, as I say, motives are always mixed, and we cannot condemn a great body of men on account of the motives which may actuate some of them, even the leaders of them. And if there be anything at all sordid in the motives of the oligarchy on one side, that may well pair off with the motives which exist on the other side, the desire to free the mines of the Rand from excessive taxation, and thereby to increase, I will not say only the gains of the capitalists but the gains of those interested in the mines generally, because no doubt if the taxation were reduced there would be a better field for the employment of labour, and labour as well as capital would gain. These motives may pair off.

Before leaving this comparison of the two ideals, I would point out to you two circumstances connected with any ideal. One is that ideals are always propagandist. No ideal seriously and heartily conceived was ever contented to remain entirely within its own limits, and that is true whether the ideal itself is a religious, a political, or a social one. I need not recall the Crusades to your mind. I need hardly recall the revolutionary propagandism of France at the time of her great Revolution, or the absolutist propagandism of the Holy Alliance which followed its overthrow. You may take it as a lesson of history that ideals are always propagandist, and there is another circumstance to be mentioned about them, that they admit of no compromise. There may be a compromise between different measures proposed to be carried out, but between two ideals there is none. The franchise and representation asked for the Uitlanders by

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Sir Alfred Milner could not be otherwise than a death-blow to the Boer ideal. Now we may think, and I have no doubt that most of us do think, that the English ideal is the better of the two, but that will not give us a right to enter upon a crusade for its propagation. If we allow propagandism to be a cause for war the result will be anarchy throughout the world. And who are we that we should take upon ourselves to say that our own ideals are not only the best, but so much the best as to make it worth while to propagate them *in* spite of the horrors caused by the sword? I must say that sometimes I have a feeling, which perhaps not many of you share, when I see the extent to which the English language and institutions are spreading over the world, that even if that spreading is brought about solely by pacific and fair means, there is the possibility that that danger may be incurred which the poet has expressed when he wrote "Lest one good custom should corrupt the world." I am therefore by no means inclined to hurry the extension even of our own ideal. We must then all of us ask what is the justification for that demand which Sir Alfred Milner made at the Bloemfontein Conference and which has since been maintained, that the English ideal should be adopted in the Transvaal Republic or war should follow, as it has followed. In considering whether there exists justification, and, if so, what it is, I shall have to go to some extent through the recent history of South Africa, but I will at once, as a thread to guide you while you follow me in that history, say the result to which I hope to come. I think that the demand on our part was not founded on any legal right, but that it may have been justified, probably was justified, by one of those situations that occur in the mutual relations of nations, soluble by no canons of legal right but for which a higher justice must be appealed to, that larger justice which in this country is exercized not by courts of justice applying the law as it is but by parliament altering the law, and which is sometimes

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necessary between nations, bringing into operation demands not founded merely upon a legal position but upon the intolerable character which a certain situation has assumed.

In 1652 the Dutch founded the Colony of the Cape of Good Hope. That colony was reinforced about the end of the seventeenth century by Huguenot refugees from France, and then at once the Dutch began to show that worship of their own system and that tenacity in clinging to it which they have shown ever since. The French language was only allowed to the French emigrants; it became compulsory for the next generation to adopt Dutch. The colony was occupied by England during the great wars at the end of the last and the commencement of the present century, when Holland, having been overrun and annexed by France, was an enemy in our war with France. We occupied that colony in amity with the family of the Prince of Orange, which had been the ruling family in Holland, but was in exile on account of the country having become French. At the peace in 1814 the colony was left in British hands. It was ceded by the restored dynasty of Holland. Its position had become of vital importance to England as a halfway house on the road to India, and at once our difficulties with the Dutch began. In 1815, the very year after the Colony had been ceded at the peace, a Dutchman called Bezuidenhout was summoned to answer for his conduct towards a native, quite proper according to the ideas of his own people, but inhuman according to ours. He refused to appear before the court and soldiers were sent to arrest him. He fired on those soldiers and, the soldiers firing in return, he was killed. The result was a Dutch rising in revenge for his death, and five of the leaders of that rising were hanged. That incident is remembered to this day with the bitterest feeling by the Dutch. The place where it occurred is called Slagter's Nek, and it still plays a considerable part in Dutch invective against England. The feeling was brought to a head by the emancipation of the

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slaves in 1833, when parliament voted £20,000,000 to compensate the slave holders. The Dutch in the Cape Colony were exceedingly angry at the emancipation of the slaves taking place at all, and the compensation which was allotted to them was insufficient, I believe about two-thirds of the real value—not that they got an unfair share of the £20,000,000, but that the £20,000,000 was insufficient—and there was an undue delay in paying it. The consequence was that there commenced the great trek, as it is called in Dutch, or emigration, of the Dutch farmers from the colony into the interior, in order to shake off the dust from their feet against us. The trek commenced in 1835, and went on through several successive years. The emigrants issued a manifesto in which they denounced the "vexatious laws" passed in the interests of the slaves, and complained of the loss thereby inflicted upon them. They also complained of "the continual system of plunder which" they said they had "endured from the Kaffirs and other coloured classes," and of the "unjustifiable odium" cast upon them by "interested and dishonest persons under the cloak of religion," by which they meant missionaries. At the end of the manifesto they said, "we quit this colony under the full assurance that the English government has nothing more to require of us, and will allow us to govern ourselves without interference in the future."

They moved from Cape Town eastward into Natal, in the south-eastern part of Africa, and northward into the interior, first across the Orange river and then across the Vaal river. They founded republics in all these districts, and the British followed them. Our claim to follow them was based on the doctrine of perpetual allegiance, by which they could not shake off their British allegiance, and, as a consequence, whatever they acquired was acquired by the British crown. That was the legal basis, and the basis of policy was the fear lest the high handed dealings of the Boers with the natives should provoke a general native rising which might be of the greatest

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danger to the colony itself. That fear had been entertained by the Dutch government even in the seventeenth century, and had led to stringent regulations by it against emigration into the interior. The result was that Natal, which was one of the earliest settlements of the trekking farmers, was annexed and became a British colony in 1843, and it has remained so ever since. Not many of the Boers remained there. The Boers who had been in Natal pushed still further into the interior, where they joined others who had gone direct to the Orange and Vaal rivers, and the present population of Natal, although to a small extent Dutch, is to a much larger extent of British blood. In the interior two more lasting republics were founded, that of the Orange Free State, between the Orange and the Vaal rivers, and still further north that of the Transvaal beyond the Vaal river. Those two republics were recognized by this country—the Transvaal in 1852[1] and the Orange Free State in 1854. There has been a great deal of fog in some minds as to the effect of this recognition; I mean that some persons have not clearly realized the difference between recognizing the republics as separate states, which was undoubtedly done, and recognizing them, which was not done, as part of the British dominions enjoying a certain amount of self-government. The conventions which were entered into with the two states were not express on the subject, but that they were recognized as separate states is beyond all question from the fact that they were intended to have, and from that time down to the present have had distinct foreign relations. A part of the British dominions, no matter what freedom it enjoys with regard to its internal affairs, can have no foreign relations distinct from those of the United Kingdom. Thus they became separate, or what in recent controversies has been called international, states, and not only that but sovereign

[1] The official name of the Transvaal was at first the Dutch African Republic, and was changed in 1858 to the South African Republic.

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international states, because the foreign relations allowed them were uncontrolled; they were at their sole option. There were in the conventions which recognized them certain stipulations as to their conduct towards the natives, but these were only treaty matters. The stipulations were such as we might have in a treaty with any other power; they were no vestiges of supremacy.

With regard to the Orange Free State matters have continued upon that footing ever since. With regard to the Transvaal matters continued upon that footing until 1877. In that year the Boers of the Transvaal suffered a severe defeat from a native chief, Sekokuni, on the west of them, whom they had attacked, and they were also in great danger from another native chief, Cetewayo, on the east, who, it was feared, would attack them. Their treasury was absolutely empty; there were no means of paying the officials, of making or repairing roads, or even of carrying on a postal service; and in those circumstances Sir Theophilus Shepstone, an official experienced in dealing with natives, was sent into the country with the view of seeing whether an annexation might be arranged, on the one hand for the purpose of promoting a sort of lofty Christian imperialism, and on the other hand of warding off the great danger to the British colonies lest a mass of victorious natives should invade them. Sir Theophilus Shepstone shortly after his arrival in the Transvaal issued a proclamation annexing it. Unfortunately the people of the country were never consulted about that annexation. He had collected a certain amount of approval from the dwellers in the few towns in which the most civilized part of the community lived, and where they felt most the stress to which the country had been brought. The larger part of the population, the farmers living in the country, were exceedingly confident. They believed, although few else believed it, that they could beat the two chiefs. They never read or

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received letters, and did not care if there was no money for carrying on the postal service. They never used roads. That there were no funds for paying officials was of no consequence to them; the officials lived in the towns, and rendered services which they regarded as being of no value. Shepstone got the signatures of only 2,500 out of 8,000 voters to memorials in favour of annexation, but he annexed the country.

The leaders of the national party, among them Mr Kruger, never ceased to protest against that annexation, and very shortly the money brought into the country by the English government, and the victory gained by British arms over Cetewayo, had completely removed all the causes for annexation, and even the dwellers in the towns ceased to be in favour of it. The whole country became united in the hope of recovering its independence. Mr Kruger visited England to try and induce Lord Carnarvon to give back their independence, and he brought with him a memorial signed by 6,591 out of 8,000 voters in what had been the republic. Lord Carnarvon stood absolutely firm about undoing the annexation. In the following year, 1879, occurred the famous outbreak of Liberal feeling, which many of you will remember, against the policy of Lord Beaconsfield with regard to the Russo-Turkish war and Afghanistan. The feeling had broken out before, but in 1879, the term of parliament having nearly expired, expression was given to it in Mr Gladstone's memorable Mid-Lothian campaign. What effect that Mid-Lothian campaign had on British politics we are not here to consider, but one of the indictments Mr Gladstone brought against Lord Beaconsfield's policy was about this matter. Coupling the Transvaal with Cyprus, he said, "if those acquisitions were as valuable as they are valueless, I would repudiate them because they are obtained by means dishonourable to the character of our country." The general election took place early in 1880, and immediately the Boers reminded Mr Gladstone, by a letter,

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written by their leaders, of his expression "I would repudiate them," and the answer which he gave—of course he had to take the opinion of his cabinet—the answer which the cabinet telegraphed was "under no circumstances can the Queen's authority in the Transvaal be relinquished." You may easily suppose that such a frustration of the hopes which they had been induced to hold, in a population which had immense confidence in themselves, brought about nearly unanimously the Transvaal insurrection at the end of 1880; and in the war so caused there occurred those successive defeats of the British forces at Laing's Nek and on Majuba Hill, after which —we must not say because of which—the British cabinet surrendered the country to its inhabitants. That surrender was made by the Pretoria Convention, which took its name from Pretoria, the capital of the Transvaal, in 1881. That convention again set up the republic as a separate state, though under the name of the Transvaal State. There has been some fog about that as there was about the convention which originally recognized the republic, and certainly it is a pity that it did not more expressly exclude the supposition that it might only be intended to erect a self-governing part of the Queen's dominions. But still, if you examine the matter impartially, there is no real doubt about its meaning. The Transvaal was to have distinct foreign relations, and that was provided for by the convention itself, only those foreign relations were to be conducted for it by the Queen's government. Consequently it would be a separate state, and, being a separate state, of course its inhabitants had a distinct national character. They were citizens, or as they call it burghers, of that republic, and not subjects of the Queen. You could not combine both characters any more than you can combine the characters of Englishman and Frenchman. Of course, although a separate state, it was to be under a suzerainty, because that is a fact for which, as you know well, the convention provided. The mere circumstance that

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its foreign relations, although distinct, were to be made for it —its treaties concluded for it—by the Queen, was enough to place it in the position of a dependent state, not an independent one, with the Queen as suzerain or paramount. Besides that, the suzerainty was mentioned in express terms in the preamble of the convention. But it was not to be an indefinite suzerainty: it was expressed in the preamble to be on the terms of the ensuing articles[1]. And indeed the convention, with its long array of articles, would have been a mere sham if any indefinite suzerainty outside those articles had been intended to be reserved.

That lasted for three years, until 1884. Then, in deference to the agitation which the Boer leaders had never ceased to keep up, it was superseded by the Convention of London, which gave to the state a larger amount of freedom. Its foreign relations were no longer to be conducted by the Queen; it was to conduct them itself, subject to the Queen's approval. The necessity of that approval still left it not fully sovereign but semi-sovereign, although a separate and international state. You may say, if you like, that it was still under a suzerainty, but the position of the republic depended upon the terms of the convention itself. Those terms were much more liberal to it than those of the previous convention. Not only was it to conduct its own foreign relations subject to the Queen's approval, but there was no longer to be a British resident at Pretoria with the power to interfere and exercize a surveillance over native affairs either within or without the republic, and there were, as before, certain stipulations as to the treatment of natives, religious liberty, and other matters which are generally included in commercial treaties between two independent states. But the scope of

[1] "Complete self-government, subject to the suzerainty of Her Majesty her heirs and successors, will be accorded to the inhabitants of the Transvaal territory, upon the following terms and conditions, and subject to the following restrictions and limitations."

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those stipulations was to be measured by the terms of the convention itself and not by any vague reservations outside it[1]. At the same time its old official name, the South African Republic, was restored to the Transvaal, which from that day to this has occupied the legal position so created.

Such has been the history down to the Convention of London, and now I will take first the claims which are supposed to have a legal foundation under that convention and the subordinate position of the South African Republic, and afterwards the considerations arising in a more general way out of the use which the Republic has from 1884 made of that degree of liberty which it possesses. There has been a certain class of claims not made on behalf of individuals, but in which the British government charged the Transvaal government with having violated the convention. There was a law passed by it to regulate the admission of aliens, for the purpose of excluding pauper aliens from its territory, which was said to be contrary to the right of immigration secured by the Convention of London. There was a law on the expulsion of aliens, by which the Boer government received the power of expelling aliens without its being judicially proved against them that they had broken any laws of the state. That was supposed also to be contrary to the right of residence stipulated by the Convention of London. There was a monopoly granted by the Transvaal government to a

[1] It has been attempted to introduce a suzerainty controlling the interpretation and operation of the Convention of London, in place of the simple one which results from and is defined by it, by the hair-splitting argument, more appropriate to legal documents at home than to the broad manner in which international documents are usually drawn and construed, that the articles of London are expressed to be substituted for the articles of Pretoria, and not the convention for the convention. But we have seen that even in the preamble of 1881, which it is desired thus to preserve, the self-government subject to suzerainty is stated to be on the terms of the articles. And the consideration that any other suzerainty, a word undefined in international law, would reduce any and every convention to a sham is decisive.

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dynamite company, the effect of which monoply was very largely to increase the cost of dynamite, and thereby the cost of working the mines. That was said to be contrary to the convention; I never could see how. There is a great deal to be said in the other two cases, but as the convention says nothing of monopolies I never could see how one could be a breach of it. Then the Transvaal government, in the exercise of that right which the second convention gave it of conducting its own foreign affairs, systematically delayed to submit the treaties which it had concluded to the Queen for approval until so late a stage that to disapprove them might cause her government to incur considerable unpleasantness with the country with which the Transvaal was negotiating. In the particular instances there was no danger of such unpleasantness arising, but by omitting to present treaties for the Queen's sanction until after they had been ratified by the government with which they had been made, which the Transvaal claimed the right to do, it might happen that in less harmless cases that other government might be seriously offended by the refusal of her sanction. Upon all or most of the matters I have mentioned the Transvaal government got abundant opinions from international lawyers that what they were doing was not a breach of the convention. On the other hand the British government was sustained by the opinion of its own lawyers in maintaining that the convention had been broken. My opinion on one or more of the cases in which I was consulted professionally was that the Transvaal government was right, and in one of them I thought it was wrong. But they were all cases which might have been remedied without war as they turned upon the interpretation of the convention, and if it was thought that there was a wrong the course might have been adopted which the Transvaal government suggested and the question submitted to arbitration[1].

[1] The great question as to the aliens admission and expulsion laws

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Then there were the claims of grievances to individuals. That leads me to enter into a little detail as to the extreme severity with which the Transvaal government carried out their ideal, because it was out of that severity that these grievances to individuals arose. In the first place with regard to the language. There was until quite recently no education provided for by public funds except that which was carried on in the Dutch language. There has been in the last year or two a little concession: some of the elementary schools are open to education given in English up to the fourth standard. After that all must go on in Dutch. That no doubt is an extreme hardship to a population the majority of which do not speak Dutch but English. But there was nothing about education in the convention, and when we treat that as a matter which might arise with any perfectly independent country, it would be absurd to suppose that a foreigner can have a claim to have his language used in schools supported by public money. How long is it in this country that a parent has had a right to have his child taught with public money?

Then, again, with regard to the administration of justice, no doubt the conduct of the Transvaal government has been very bad. No one but a burgher can be employed as a

turns on whether the scanty words in Art. 14 of the Convention of London are to be considered to deal exhaustively with their subject, or whether they must be interpreted by the usage of nations and the general policy which they appear to have been intended to secure, like the similar and no less scantily expressed stipulations in numerous commercial treaties between independent states, that similarity being itself an element in the case. Among the continental international lawyers consulted by the South African Republic there was a general concurrence of opinion in its favour as to both laws. My opinion, for what it was worth, accepted the larger principle of interpretation, but was in favour of the republic only on the admission law, against it on the expulsion law. In the dynamite case the British argument appears to rest on twisting a stipulation for equality between burghers and aliens into the prohibition of a monopoly bearing with equal hardness on both.

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juryman, or is employed as a policeman. That prevented foreigners from serving as jurymen in cases where other Uitlanders might be concerned, and it left the police of the great mining city of Johannesburg in the hands of Dutch-speaking burghers, mostly from the country districts, who neither knew the language of the people nor the requirements of a city population. Out of these abuses with regard to the police and juries there arose complaints that individuals had been subjected to hardships for which, it is said, we should be able to claim redress if it had been a perfectly independent country in which those hardships had been suffered. In many cases no doubt that was true. But then again why were not these grievances in particular cases made a subject for arbitration between the two governments? As to the general evil from which they arose, the extremely narrow policy with regard to the police and justice, that was something which if the country had been Germany or Russia we could not complain of, neither did the convention give us any right to complain of it in the Transvaal. And so with regard to other grievances. The real remedy for any grievances which individuals might complain of, therefore, was arbitration[1].

[1] It seems desirable to draw attention to the difference between such arbitrations as I recommend here and on p. 15, on the one hand, and on the other hand an arbitration on the general relations between two states, such as I understand the Transvaal government to have been aiming at, as stated on p. 3. Art. 16 of the convention on mediation and arbitration drawn up this year at the Hague expresses that "in questions of a legal nature, and especially in the interpretation or application of international conventions, arbitration is recognized by the signatory powers as the most effective, and at the same time the most equitable, means of settling disputes which diplomacy has failed to settle." The Russian draft had been limited in the same way: see its Art. 7. And the memorandum accompanying that draft, which is a remarkably able state paper, had dwelt on the difference between international questions of law and of policy, with respect to the applicability of arbitration to them. See the Bluebook c. 9534, pp. 20, 42–45, 305. The question whether killing Mr Edgar could be justified, and even, though that example goes to the limit, the question up to what stage the Transvaal government could omit

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Then there was the claim of the franchise. Of course in no country are foreigners admitted to it. The claim of the franchise presupposed that there should be easy admission to naturalization because, the republics being states separate from the Queen's dominions, the characters of British subject and Transvaaler or Orange Free Stater could not be combined. No doubt the policy of the Transvaal government was most illiberal. After the discovery of gold was made and the Uitlanders began to flow in it passed laws the result of which was that, whereas at the date of the London Convention a person could obtain naturalization and the franchise together after five years' residence, under the new laws he could not get the latter in less than fourteen years, and then only if individually named in a resolution of the volksraad. No such length of residence is required in any other country that I know of. But, again, in the convention there was nothing about the franchise. An attempt has been made to found that demand of the franchise on a promise said to have been made in 1881, before the Convention of Pretoria. At that time there were commissioners engaged in treating with the Boer leaders as to the terms on which the restoration of the country should take place. At one meeting of those commissioners the chairman, Sir Hercules Robinson, now Lord Rosmead, asked: "Had British subjects free trade throughout the Transvaal before the annexation?" Mr Kruger replied: "They were on the same footing as the burghers. There was not the slightest difference, in compliance with

to present a treaty to the Queen for her approval without violating the Convention of London, are legal ones, to the fair determination of which either way this country might submit. But since our policy in South Africa comprized as an essential element the dependent character of the South African Republic, we could not accept a decision by an arbitrator that such was not its character. I pointed out the distinction between legal and political differences with reference to international arbitration in an article which appeared in the *International Journal of Ethics* for October, 1896.

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the provisions of Sand River," that is, of the convention by which the republic was acknowledged in 1852. "The chairman: I think you will have no objection to allowing that to continue so? Mr Kruger: No, there will be equal protection for every one. Sir E. Wood: And equal privileges? Mr Kruger: We make no distinction in so far as burgher rights are concerned. There might perhaps be some small difference in the case of a young person who has just come into the country." And on a later day Dr Jorissen, the state attorney, explained that Mr Kruger meant a new arrival when he spoke of a young person, and referred to the fact that before the annexation a year's residence was required for naturalization. There, you see, the conversation arose not about political rights at all, but on a query about free trade, which does not involve naturalization, and its scope is further shown by the reference to the Sand River convention. Mr Kruger indeed in his answer went a little beyond the question and spoke of burgher rights, yet it is a familiar principle at least in English law that when you enter upon a written agreement after the discussion of its terms you do not go behind it, and if any terms mentioned in the discussion are not included in the agreement, they are supposed not to have been thought of sufficient importance to be so included, and what the parties are bound by is that which appears in the agreement[1].

[1] Some further observations must be made on this. (1) Even if the scope of the conversation be taken from Mr Kruger's answers and not from Sir Hercules Robinson's questions, the answers gave notice that some term of residence would be required for naturalization. (2) The term was lengthened to five years in 1882, so that, if this had been thought to be a breach of an engagement that things should remain as they were in respect of naturalization or the franchise, there was ample opportunity by the Convention of London to rectify the omission of that engagement from the Convention of Pretoria and to provide for the future. That this was not done, nor is there any trace that the subject was mentioned in the negotiation of the later convention, is proof enough that no importance was attached to the conversation at that time. (3) It is only during the last two or three years that, so far as I am aware,

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I sum up that neither the different claims that the convention has been broken by the Transvaal government, nor the claims to redress for grievances to individuals, have been such as could be made a cause of war. They have either been such as we could not make at all against a stronger foreign country in which the same circumstances occurred, or they have been claims for which, the facts as regards them being disputed, the true remedy would have been arbitration. And before I leave that part of the subject, I will say that I think the attempt to find for these various claims a justification on the ground of the conventions, or of the conversation of 1881, has seriously damaged our case. It has led to untenable arguments being used, and to the introduction of the principle, a perfectly untenable principle, that the conventions themselves have not to be interpreted according to their language but under the assumption of a vague suzerainty. The kind of argumentation which has been used, the introduction of this vague suzerainty, has, I think, contributed to that suspicion of our motives, to that suspicion of our being unwilling to abide by any written agreement, which no doubt has been one of the causes of this war. But I think we may pass them by in consideration of the vastly more important matters which arise out of the general policy of the Transvaal state since it was established on its present footing by the convention of 1884. It does seem to me that there is very great reason for contending that it has systematically acted in such a manner as to constitute a grave danger, which entitled this country to throw the letter of the convention aside and to demand relief from a situation which had become intolerable[1].

the conversation has turned up in the discussions on the subject of the franchise. It was therefore with amazement that I read in the Queen's speech, at the dissolution of parliament on 9th August last: "The position of my subjects in the South African Republic is inconsistent with the promises of equal treatment on which my grant of internal independence to that republic was founded."

[1] I believe that the bad and mischievous argumentation to which

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At the time of the Convention of London there was no European power in South Africa except England and Portugal, a power so weak that it might be left out of account, on the east coast. England had a vague idea of claiming the tract on the west coast north of the Orange River which now on the map is coloured German. It was then not German, neither was it British, but there was a vague notion that some day it might be made British. It was in 1883 that the attention of Germany was first directed to that part of Africa. There was a great deal of shilly-shallying on the part of our government; it procrastinated and gave inconclusive answers to Prince Bismarck's question whether England was prepared to protect German settlers in that region. Finally the German flag was hoisted at Angra Pequeña on 7th August 1884, and our government acquiesced in its being so hoisted. They could not do otherwise in the pass to which they had brought the matter. Germany then was established on the west coast of Africa in the very year in which the Convention of London was concluded. Between Germany and the Transvaal republic there was Bechuanaland, the strip of country which is now coloured red, but at that time the British dominions did not stretch so far north.

The government of the Transvaal republic immediately jumped at the prospect of getting into contact with Germany on the west coast, and violated openly the obligation which it had undertaken in that very year by Art. 2 of the convention of 1884, copied from Art. 19 of that of 1881, that it would "strictly adhere to the boundaries defined in the 1st article of this convention, and do its utmost to prevent any of its

I refer has had a root in one of our national qualities which is entitled to high respect when kept within due bounds, namely our passion for legality. It is no new thing in our public life to strain legal arguments to the uttermost and beyond the uttermost, rather than admit that the time has arrived when help must be found outside the law, or in what the non-existence of a legislature makes difficult in international matters, a change in the law.

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inhabitants from making any encroachments upon lands beyond the said state." Freebooters from the republic overran much of Bechuanaland, and the republican government, so far from holding to its engagement to restrain any such incursions, supported them and entered into a direct conflict with the British government for the supremacy over the country. Early in 1884 the Queen proclaimed her protectorate over Bechuanaland, and in May her protection was formally declared to apply to the chief Montsioa, whom the freebooters were attacking, but in September President Kruger issued a proclamation taking Montsioa and Moshette, with their subjects and rights, under the protection and jurisdiction of the South African Republic. You will observe the dates. Mr Kruger tolerated the British supremacy over Bechuanaland till August, but one month after the hoisting of the German flag at Angra Pequeña he set it at nought. An unmistakable announcement of determination however brought Mr Kruger to his senses. He withdrew his proclamation. Parliament voted £675,000—the ultimate cost was much larger—for the expedition which was sent out under Sir Charles Warren, and that expedition succeeded in finally bringing all Bechuanaland under British control[1]. But

[1] The Transvaal government or leaders had before this attempted more than once to establish political relations with Germany, notably, it is believed, in 1874, 1878 and 1883. But I pass over what may be attributed to the desire to undo the British annexation of 1877, or to obtain better terms than those granted at Pretoria in 1881. The important point is how the legal situation has been worked which existed between the United Kingdom and the South African Republic at the outbreak of the war. It is not necessary to suggest that either in 1884 or since there has been any agreement between Germany and the republic. It is sufficient to show the Transvaal moving as it were on parallel lines with Germany, so as to take up a position from which an agreement was likely to result as soon as England might be in a difficulty anywhere. As to the breaches of the conventions, Transvaal freebooters had been in Bechuanaland from 1881 in spite of the Convention of Pretoria, and had established there the two republics of Stellaland and the Land of Goshen, which the British government had of course not recognized. The

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that was not the end of Mr Kruger's attempt to coquet with Germany. As the Uitlanders in the Transvaal increased in numbers and naturally became less willing to bear the Dutch mode of government, they formed associations for reform and thereby incurred the displeasure of President Kruger. That is expressed in a speech of his, part of which I will read to you, made on 27th January 1895, the birthday of the German emperor, nearly a year before the Jameson raid.

"It is the spirit of loyalty which I admire in the Germans. They are under the laws, they work under the laws, they obey the laws, and they fell in the Kaffir war under the laws. All our subjects are not so minded. The English, for instance, although they behave themselves properly and are loyal to the state, always fall back upon England when it suits their purpose. Therefore I shall ever promote the interests of Germany, though it be but with the resources of a child, such as my land is considered. This child is now being trodden upon by one great power, and the natural consequence is that it seeks protection from another. The time has come to knit ties of the closest friendship between Germany and the South African Republic, ties such as are natural between father and child[1]."

You see that was said at a time when there was no raid, no attempt at a revolution, only complaints of the hardship of the laws and the formation of associations with a view of reforming them; and when the only complaint which he could make against England was that England insisted upon interpretations of the convention which did not agree with his own interpretations. The British government appealed direct to the German government in consequence of that speech. The German government repudiated any desire to occupy the position with regard to South Africa and the Transvaal state which Mr Kruger had clearly intimated that he wished it to occupy. But it said that it objected to any alteration of

territories of these republics were divided between the British protectorate and the Transvaal by the enlarged boundary which the Convention of London gave to the latter, but the Goshenites refused to acquiesce, and they were allowed publicly to advertize in the republic an expedition against Montsioa.

[1] *Edinburgh Review*, vol. 183, p. 294.

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the *status quo*, that is of the existing state of things in South Africa, and that even a purely commercial federation of the South African colonies and states would be an alteration of the *status quo* to which Germany would object.

In October of the same year, 1895, still before the Jameson raid, there took place the incident of the closing of the drifts or ferries over the Vaal River into the Transvaal state. Those ferries were closed with a view of forcing the traffic to take the course by Delagoa Bay, in Portuguese territory, to which the Transvaalers had made a railway, instead of that by the Cape. That desire, no doubt, was partly in the interests of the railway itself, but it was not wholly a commercial or a financial desire. It was to a great extent a political desire to bring their country into a closer connection with Portuguese and German influences, and to get it out of the region of British South Africa. In connection with the closing of the drifts, President Kruger used some of that unguarded language which marks him. He did not put it only on the ground of getting traffic for the railway to Delagoa Bay; he said "it was his intention to build a wall and construct a barbed wire fence for the exclusion of goods coming from the Cape Colony[1]." The closing of the drifts was a direct breach of the convention of 1884, and our government succeeded in getting them opened again, but by nothing short of a direct threat of war.

Then followed the Jameson raid at the end of 1895, and during all this time, even before the raid, you must bear in mind that powerful forts were being built to command Johannesburg, and that the country was being armed to the very teeth[2]. Is it possible to suppose that the armament

[1] Report of Mr Schreiner, Cape Attorney-General, in the Bluebook c. 8474, p. 4.

[2] In how serious a situation that stupid as well as lawless raid would have placed England if it had enjoyed only a few days' success may be inferred from the anxiety of the German government to march fifty marines from the Seeadler into the Transvaal from Delagoa Bay, "for

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was not directed against England? Since then England and Germany have happily come to be on much better terms. There had always been until about two years ago a desire on the part of Germany to get hold of Delagoa Bay, and therefore you see that in attempting to force the traffic to that direction, President Kruger—and not only he, but many others—thought it might before long bring him into connection with German influence. About two years ago an agreement was come to between England and Germany, not yet published, but by which it is believed to have been arranged that in case Portugal should be disposed to part with Delagoa Bay to any one, it should be to England and not to Germany[1]. If the agreement is such, it is a final renunciation by Germany of any designs upon South Africa beyond her actual limits there, and at any rate the agreement has inaugurated that better understanding which now exists between England and Germany. Since then it has been of course perfectly useless for President Kruger to attempt to get into direct contact with Germany or to avail himself of her against England.

But that was not the last of the propagandism which attends upon all ideals, and there has been another design in pursuance of which the nominally defensive alliance between the Orange Free State and the South African Republic was concluded some two years since. It is the design to unite the whole of South Africa in a big South African Republic from which England should be entirely excluded, except so far as

the protection of the lives and properties of Germans." The request for permission was still pressed on the Portuguese government after news had been received, not only that the British government had taken the course which its duty pointed out, but that Dr Jameson had been defeated and that foreigners were in no danger.

[1] England already held from Portugal a right of preemption over Delagoa Bay, but it remained to be seen whether Germany would not regard an exercise of that right as an alteration of the *status quo* in South Africa and object to it.

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she might receive permission to remain at Cape Town for a time, because for a time, until the republic became strong enough to protect itself, it would be to their interest to have protection; and as England itself would cling to Cape Town as a halfway house on the road to India—it is rather a wild, chimerical design—it seems to have been thought that it might be possible to arrange terms with England to remain there, partly for her own protection, and partly for the protection of the South African Republic. It was chimerical, but there is no doubt whatever that that design—and more especially within the last two or three years—has been in the minds of the Dutch in the republics, and that an attempt has been made to instil it into the Dutch population of Cape Colony. It has been advocated largely in the press of both republics, the Orange Free State and the Transvaal. That that is not only an English opinion at the Cape I will give you this proof. Sir James Sivewright, who was at that time a member of the Ministry of Sir John Gordon Sprigg, complained vehemently of the line taken by the press in the two republics, and of a republican propaganda and emissaries to support it which he said were actively at work in the districts of Worcester, Wellington and Paarl in the colony, therefore very near Cape Town itself. He made that complaint on 20th January 1897, in a public speech of which President Steyn of the Orange Free State took notice and attempted to refute it. But Sir James Sivewright in reply instanced "the writing of the republican press, notably the *Express* of Bloemfontein and the *Volksstem* of Pretoria, as taken over by the newspapers of the colony," adding "with the knowledge which from experience I have gained of the power and position of the writer in at least one of the papers named[1]." No notice was taken of the speech in the Transvaal so far as I am aware, and indeed it would have been difficult for the Transvaal

[1] See for this incident the Bluebook c. 8423, pp. 91, 110—112, 125—8.

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government to exculpate itself, because by the press law which they enacted in 1896 the president has the power, on the advice and with the consent of the executive, to prohibit the circulation of printed or published matter being in his judgment against good morals, or dangerous to peace and order in the republic. A country which has press laws of that kind, whether it be a republic or an autocracy like Russia, must take the responsibility with the right; it cannot exculpate itself when it permits a propaganda of that kind to take place in the columns of its press.

I have given you reasons for characterizing the policy pursued by the Transvaal government since 1884, and I am quite prepared to think that the time had arrived at which it was necessary to take some serious step. Because if what I have said is correct, if the policy of the two republics is really what it has been represented as being, then the state of things was this: there were upon our borders in South Africa two states of great military power—because although their population is not great, yet the whole of that population, as we see, is trained to arms and fights very well—and those two military powers were engaged in a propaganda among our own people for the ultimate absorption of nearly the whole of our colonies in a big South African Republic from which England was to be excluded. It is perfectly unnecessary to say that that propaganda had already had considerable effect among the Cape Dutch. It may or may not, but what we do know is that even if it had not, such a propaganda if allowed to continue could hardly fail to have an effect sooner or later, because the fact of its not being checked would be taken as a proof of weakness on the part of this country. It is equally unavailing to say that no steps have been taken by the governments of the two republics actually to carry out the scheme of that propaganda. It is not likely, not having the support of Germany, that they would take any steps in peaceful times. But if it is the fact

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that there are considerable military powers on our frontiers which have that propaganda at heart, then I think it would be folly to ignore it. We must expect as reasonable men that an attempt by arms would be carried out when England was in difficulty, and the only way to deal with it was to deal with it at a time when England was not in difficulties. I know well that friends of the Boers deny the existence of the propaganda itself, or at least that it is of serious importance; they deny the existence of the designs imputed to them. I do not give what I have told you as conclusive proof, but as sufficient proof to create reasonable suspicion in cautious minds, and as reason enough for us to believe Sir Alfred Milner, a very eminent man, when he says that this is the case, at any rate not to put our own individual opinions against those of a man so placed. Now then it was expressly upon this ground that Sir Alfred Milner, not in speaking to Mr Kruger at the Bloemfontein conference—he did not wish to embitter that conference by referring to any such ground as that which I am now dealing with, a ground of course which Mr Kruger would dispute, a propaganda which of course he would disclaim—it was not in the conference but in the famous despatch which preceded the conference[1] that he, to Mr Chamberlain, expressly put the line he intended to take upon that ground. He says:—

"South Africa can prosper under two, three or six governments, but not under two absolutely conflicting social and political systems, perfect equality for Dutch and British in the British colonies side by side with permanent subjection of British to Dutch in one of the republics. It is idle to talk of peace and unity under such a state of affairs. It is this which makes the internal condition of the Transvaal republic a matter of vital interest to Her Majesty's government. No merely local question affects so deeply the welfare and peace of her own South African possessions.....A certain section of the press, not in the Transvaal only, preaches openly and constantly the doctrine of a republic embracing all South Africa, and supports it by menacing references to the armaments of the Transvaal, its alliance with the Orange Free State, and the active

[1] The telegram of 4th May 1899.

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sympathy which in case of war it would receive from a section of Her Majesty's subjects. I regret to say that this doctrine, supported as it is by a ceaseless stream of malignant lies about the intentions of the British government, is producing a great effect upon a large number of our Dutch fellow colonists. Language is frequently used which seems to imply that the Dutch have some superior right even in this colony to their fellow citizens of British birth. Thousands of men peaceably disposed, and if left alone perfectly satisfied with their position as British subjects, are being drawn into disaffection, and there is a corresponding exasperation on the side of the British."

I don't think it was very wise of Mr Chamberlain to publish that. It would have been far better, if it be true that the propaganda has already produced a considerable amount of disaffection among the Cape Dutch, to have kept that private. But there you have Sir Alfred Milner's statement. Mr Chamberlain sanctioned his policy on the same ground[1], and the result was that demand of the franchise with substantial representation which he put forward at the Bloemfontein conference and which Mr Kruger refused.

From the Bloemfontein conference to the outbreak of war there was no variation in the positions taken up by the two sides. Without going through the negotiations step by step, I may summarize them as consisting, first, of an attempt on the part of the Transvaal government to elude Sir Alfred Milner's demand by an inadequate franchise law, which proposed to give the franchise at the end of seven years, but which was fenced with so many conditions that, according to the opinion of those best entitled to judge, it would really have had no effect; and then, when they found that our government would not accept an inadequate franchise law, the

[1] ".....Her Majesty's government are entitled to make representations with a view to securing redress. This ordinary right of all governments is strengthened in the present case by the peculiar relations established by the conventions between this country and the Transvaal, and also by the fact that the peace and prosperity of the whole of South Africa, including Her Majesty's possessions, may be seriously affected by any circumstances which are calculated to produce discontent and unrest in the South African Republic." Despatch of 10th May 1899.

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rest of the negotiations consisted in offering a five years' franchise law without hampering conditions, but only upon other conditions which they knew that this government would not accept. Finally, the position of the Transvaal government is contained in their notes of 19th and 21st August, in which they offer seemingly most favourable terms, terms which if they had been offered without conditions would have been most favourable. They offered a five years' franchise, retrospective, eight new seats for the Rand, and not only a vote for the volksraad but also for the elections of the President and Commander-in-Chief, and they expressed a willingness to receive and to consider friendly suggestions as to the franchise law to be passed. Now come to the conditions. One of them was that the British government should promise in future never to interfere in their internal affairs, that this should be a final interference once and for all; secondly, not to insist further on the existence of a suzerainty, and, thirdly, to agree to arbitration on particular matters. Mr Chamberlain's answer to that expressed satisfaction with the terms themselves, apart from the conditions. With regard to the condition not to insist further on the existence of a suzerainty, he referred to the previous correspondence in which, while insisting—theoretically insisting—upon a vague suzerainty, he had said that since the republic was prepared to abide by the convention of 1884 there was no controversy as to the essential point[1]. As to the condition to agree to arbitration on par-

[1] In a despatch of 16th October 1897 Mr Chamberlain had refused to agree to a proposal of arbitration, which I understand to have included an arbitration on the general relations between the United Kingdom and the South African Republic, as being improper where there was a suzerainty. On 16th April 1898 Dr Leyds, the state secretary of the republic, replied that the suzerainty reserved by the preamble of the convention of 1881 no longer existed, and that it would be no reason against arbitration if it did. On 15th December 1898 Mr Chamberlain argued that the suzerainty of the preamble of 1881 still existed, but added: "Her Majesty's government have taken note of the assurance, once more repeated at the commencement of Dr Leyds's note,

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ticular matters, he accepted that also. The one condition upon which there was nothing like an acceptance, but a clear and firm rejection, was the promise in future not to interfere

that the government of the South African Republic are prepared in every respect to abide by the stipulations of the convention of 1884. These stipulations undoubtedly include 'reservations with reference to certain specified matters.' There is thus no controversy as to the essential point in the relations between the two governments, which gives to Great Britain a position of superiority." On 9th May 1899 Mr Reitz, the new secretary of state of the republic, wrote in support of Dr Leyds's view. And on 13th July 1899 Mr Chamberlain wrote: "Her Majesty's government.....have no intention of continuing to discuss this question with the government of the republic, whose contention that the South African Republic is a sovereign international state is not in their opinion warranted either by law or history, and is wholly inadmissible." And he quoted Lord Kimberley's instructions to Sir Hercules Robinson preparatory to the convention of 1881, in which it was stated that "entire freedom of action will be accorded to the Transvaal government, so far as is not inconsistent with the rights *expressly* reserved to the suzerain power. The term suzerainty has been chosen as most conveniently describing superiority over a state possessing independent rights of government, subject to reservations with reference *to certain specified matters*" (the italics are mine). It was to this despatch of 13th July that Mr Chamberlain referred in his answer of 28th August to the terms offered by the Transvaal government on 19th and 21st August, but that reference must bring in the despatch of 15th December 1898 as a part of the connected correspondence. So far from claiming too much for the British government in saying that it expressed itself satisfied for essential purposes with the express conventional terms, it may be questioned whether, even on the despatch of 13th July alone, it is quite fair to the British government to say that it was theoretically insisting on a vague suzerainty.....The Transvaal condition as to arbitration was accepted in the despatch of 28th August subject to "a discussion of the form and scope of a tribunal of arbitration from which foreigners and foreign influence are excluded." And the reply to the general condition against future interference was expressed in a manner apparently intended to soften the rejection. "First, as regards intervention, Her Majesty's government hope that the fulfilment of the promises made, and the just treatment of the Uitlanders in future, will render unnecessary any further intervention on their behalf, but Her Majesty's government cannot of course debar themselves from their rights under the conventions, nor divest themselves of the ordinary obligations of a civilized power to protect its subjects in a foreign country from injustice."

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again in the internal affairs of the republic. That promise, of course, it was impossible to give, after all the experience we have had, which teaches us at least to say that we can place no faith in the Transvaal government. The answer of the republic to that despatch was to declare that the terms were offered only subject to the conditions, that a refusal to consent to the conditions upon which they were offered was equivalent to a refusal of the terms themselves. Nothing further took place before the outbreak of war except this, that Mr Chamberlain at the last moment added a new demand. He demanded, if the franchise was settled, that the new members who represented the Uitlanders in the volksraad should be allowed to speak English. Of course, as they would not be able to speak Dutch, their presence in the volksraad would be useless without that permission. There is no objection made to the French Canadians speaking French in the parliament of Canada. But that demand the Transvaal government refused absolutely.

And then, when the grass on the veldt was grown enough to afford forage for the horses, they declared war with an ultimatum which demanded that we should remove at once all our troops from the borders of the republic, that we should remove from South Africa all troops landed there since the 1st of June, and that the troops then at sea should not be landed in South Africa. The ultimatum came at a time when negotiations had never been broken off, when it was still possible for either party to make fresh proposals. It demanded too that we should leave ourselves disarmed, with nothing but our usual small garrison, in the presence of two armed republics, and it is no wonder that such an ultimatum as that was instantly refused[1].

If we are asked what it is we are at war about, I would

[1] The fact that it was so framed lights up the uncertainty that might possibly have still rested on the policy of the two republics, and exhibits them insisting on a position of military superiority in South Africa.

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put the final points at issue shortly thus. The British demand is for the franchise to be obtained after five years' residence, also by those who have already resided five years in the republic, together with a substantial number of new seats for the Rand. That is refused unless we give a promise, which we decline to give, of never again on any ground interfering with the affairs of the republic. That the promise so demanded was meant to include intervention on grounds of general international law is evident from the circumstance that the question of the suzerainty was made the subject of a separate condition in the terms proposed on 19th and 21st August. Then there is the other British demand of the free use of either language in the volksraad, which is refused absolutely. There is the Transvaal demand that we should submit not only particular questions but the general relations of the two countries to arbitration, which would be equivalent to referring it to an arbitrator to make a new convention[1], and that we should disarm our colonies in the face of their armaments. These are the short issues on which we are now at war. The Transvaal ultimatum was more than an ultimatum ; it was a conditional declaration of war. It declared that if its terms were not accepted by the time named a state of war would exist. The terms were not accepted by the time named, and we instantly became as much at war in the regular international sense as if the Queen had herself made a declaration of war by the usual proclamation. Thereupon the Orange Free State issued a declaration of war against England on the ground of the

[1] The form in which this demand was made in the ultimatum was "that all points of mutual difference shall be regulated by the friendly course of arbitration, or by whatever other amicable way may be agreed upon by this government with Her Majesty's government." This could be worked as a peremptory demand for arbitration, simply by not agreeing to any other amicable way that might be proposed. The correspondence extending over years must be examined in order to appreciate the scope of the desired arbitration.

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Transvaal republic being, as they said, unjustly attacked, so that the *casus fœderis* of a defensive alliance had arisen.

We are then internationally at war. The idea which is often expressed in a part of the press that it is not an international war, but that it is possible to treat the enemy as insurgents, is perfectly absurd. No serious person who knows anything of the case would maintain it for a moment. But although we are now internationally at war it will by no means follow that the war will conclude by our becoming internationally at peace. It may be, the war having now broken off the previous relations between the governments, that those relations may never be re-established; it may be that the only remedy for the evil will be the annexation of these two republics. It is now rather early to speak of that, but if that should be the remedy, if in the end there should be no negotiations, no terms of peace, no recognition of the republics as still continuing to exist but simply a proclamation of annexation, then we must remember what President Kruger said at the Bloemfontein conference, that independence on the footing of having the Dutch swamped by Uitlanders governing the country according to the English and not according to the Dutch ideal would be worse than annexation [1].

[1] The exercise of the extreme right of conquest by the annexation of the Orange Free State and the South African Republic to the British dominions would not prevent any powers of self-government which might be thought fit being given to the territories which now compose them. The empire includes examples shading off in that respect from the dominion of Canada to the rock of Gibraltar. Nor would annexation prevent the separation, if approved, of the goldmining districts in which the non-Boers greatly preponderate from the more purely Boer districts, so that in the latter the Dutch population might in some degree have the satisfaction of living their own life, under due provisions for the benefit of all other inhabitants of the same parts. Only the constitutional authority of the crown or of parliament would be supreme, and any necessary modifications of the arrangements might be made by that authority from time to time. There would be no more place for the fog

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which has been noticed in the lecture (pp. 9, 12) as clouding some minds about the existence of the republics as separate states.

That fog appears to have reached its climax in the Queen's speech proroguing parliament on 27th October, in which Her Majesty, after acknowledging the liberal provision made for the expense of military operations in South Africa, was made to say, "I trust that the divine blessing may rest upon your efforts and those of my gallant army to restore peace and good government to that portion of my empire." To include the two republics in the empire was to deny them a separate existence in any sense known in Europe or among people of European descent. It is just possible that the intention was to anticipate conquest as the result of the war, but I rather believe that the expression was the consequence of looking at the subject from an Indian point of view. It is well known that the relations between the United Kingdom and the native states in India cannot be expressed without contradiction in terms of international law, but that does not matter, for it has been officially notified in the Indian government gazette that "the principles of international law have no bearing upon the relations between the government of India as representing the Queen-Empress on the one hand, and the native states under the suzerainty of Her Majesty on the other": No. 1700 E, 21st August 1891. It has suited our convenience to build up a system of our own, such as might have existed in Europe if the history of Europe had been different but does not in fact exist there. If minds preoccupied by that system cannot work one of paramount and dependent states connected by written documents such as are known among Europeans, that is another reason for annexation when a just occasion for it has been given. In that case, if there is to be no more misapprehension in the future, the proclamation of annexation must come first, whatever means be afterwards taken to ascertain what arrangements will best suit the part of the Boer population which may be willing to live as inoffensive British subjects. It is therefore gratifying to find that in the newspapers of 15th November Lord Salisbury corrects the representation given by Lord Edmond Fitzmaurice of what he had said at the Mansionhouse on the 9th, a representation into which Lord Edmond had, no doubt inadvertently, introduced a mention of "terms of peace."

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